

Message Text

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PAGE 01 USUN N 04756 270055Z

71

ACTION L-03

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SUBJECT: SIXTH COMMITTEE (LEGAL) -- ILC REPORT

1. SUMMARY: FRANCE, IRAN, USSR, THE CHAIRMAN OF ILC, SYRIA, AUSTRALIA, VENEZUELA, GUYANA, COLOMBIA, EL SALVADOR, CANADA, ISRAEL, MEXICO, SPAIN, LESOTHO AND NIGERIA ADDRESSED COMITE ON OCT 25 AND 26. HIGHLIGHTS FOLLOW. END SUMMARY.

2. FRANCE NOTED AND ASSOCIATED SELVES WITH EC-9 PRESENTATION ON MOST-FAVORED-NATION DRAFT ARTICLES (MFN) AND CONCENTRATED ON STATE RESPONSIBILITY (SR). SAID ARTICLE 18(2) CREATES MANY DIFFICULTIES, SUCH AS MANIPULATION OF JUS COGENS DEFENSE. CRITICIZED ARTICLE 19 AT LENGTH. SAID THE ARTICLE WAS A RADICAL CHANGE IN INTERNATIONAL LAW, THAT THE DEFINITIONS WERE VAGUE, AND THAT THERE WAS NO MECHANISM FOR JUDICIAL DETERMINATION. ADMITTED SOME ACTS REQUIRE MORE THAN REPARATION AD INTEGRUM BUT SAID ILC MUST BE MUCH MORE THOROUGH IN ITS WORK.

3. IRAN SUPPORTED OMISSION OF CUSTOMS UNION EXCEPTION FROM MFN. RE SR, PRAISED ARTICLE 19 AND SUPPORTED ARTICLE 18.

4. USSR EXPRESSED SATISFACTION WITH WORK ON SR. SUPPORTED UNCLASSIFIED

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PAGE 02 USUN N 04756 270055Z

ARTICLE 18(2). STRESSED NEED FOR TWO CATEGORIES OF

BREACHES OF OBLIGATIONS. NOTED ARTICLE 19 HAD BEEN ADOPTED UNANIMOUSLY BY ILC. APPROVED INCLUSION OF CRIME OF "GEOCIDE" RPT "GEOCIDE" IN ARTICLE 19(3)(D). RE MFN, PRAISED ARTICLES 21 AND 27 PREFERENTIAL TREATMENT FOR LDC'S. ALSO, SUPPORTED OMISSION OF CUSTOMS UNION EXCEPTION. SAID CUSTOMS UNIONS WERE "DISCRIMINATION BY STRONGEST IMPERIALIST POWER".

5. EL ERIAN (CHAIRMAN, ILC) SUMMARIZED DEBATE TO DATE. SAID MFN HAD BEEN FAVORABLE RECEIVED. CONCENTRATED ON ARTICLE 19 OF SR. ALTHOUGH "SUMMARIZING", HE WAS, AS CHAIRMAN AND HENCE REPRESENTATIVE OF COMMISSION, SUPPORTIVE OF ITS DRAFT OF THE ARTICLE. STRESSED THAT UN CHARTER RECOGNIZED SERIOUSNESS OF CERTAIN BREACHES AND PROVIDED FOR SANCTIONS BEYOND REPARATION. NOTED THE RELATION BETWEEN ARTICLE 19 DEFINITIONS AND EMERGING PEREMPTORY NORMS.

6. SYRIA CRITICIZED MFN FOR INSUFFICIENTLY REFLECTING NEEDS OF LDC'S AND CERDS. PRAISED ARTICLE 19 OF SR, BUT QUESTIONED INCLUSION OF POLLUTION IN LIST OF CRIMES.

7. AUSTRALIA (LAUTERPACHT) GAVE SCATHING CRITICISM OF ILC WORK OF SR. SAID ENTIRE DRAFT TO DATE WAS UNDULY COMPLEX AND REPETITIVE. RE ARTICLE 19 SAID DIFFICULT TO GET INTERNATIONAL AGREEMENT ON WHAT IS MORALLY REPREHENSIBLE. SAID CHARACTERIZATION OF SOME BREACHES AS "CRIMINAL" WILL DOWNPLAY SERIOUSNESS OF OTHER BREACHES. SAID ARTICLE INHERENTLY WEAK BECAUSE LACKED SANCTIONS, JUDICIAL DETERMINATION, AND OBJECTIVE CRITERIA IN DEFINITIONS AND BECAUSE OF PROBLEM POLITICAL MANIPULATION. CRITICIZED ILC'S COMMENTARY SUPPORTING ARTICLE 19 BY A SERIES OF THIN AND UNCONVINCING ARGUMENTS AS "LAMINATION, A TECHNIQUE USEFUL IN THE PLYWOOD INDUSTRY BUT NOT IN FORMATION OF INTERNATIONAL LAW." CALLED UPON ILC TO OMIT ARTICLE 19 AND DEAL WITH SUBJECT THOROUGHLY AT ANOTHER TIME.

8. VENEZUELA MADE BRIEF STATEMENT ON NON-NAVIGATIONAL USES (NNU). SAID PRIORITY SHOULD NOT BE GIVEN TO POLLUTION BECAUSE A PROBLEM OF ONLY THE DEVELOPED STATES.

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PAGE 03 USUN N 04756 270055Z

9. GUYANA ASKED FOR BROADER PREFERENTIAL TREATMENT FOR LDC'S IN MFN AND INCLUSION OF A CUSTOMS UNION EXCEPTION. RE SR, SUPPORTED ARTICLES 18(2) AND 19. RE NNU, OPPOSED CONCEPT OF DRAINAGE BASIN.

10. COLOMBIA CALLED FOR INCLUSION OF A DISPUTES SETTLEMENT PROVISION AND A CUSTOMS UNION EXCEPTION IN THE MFN.

11. ELSALVADOR ASKED FOR ADDITION TO ARTICLE 21 OF MFN OF A PARAGRAPH EXCEPTING PREFERENTIAL TREATMENT GIVEN BY ONE LDC TO ANOTHER LDC. RE SR, SUPPORTED ARTICLE 18(2) BUT RECOGNIZED NEED FOR COMPULSORY DISPUTE SETTLEMENT. SUPPORTED ARTICLE 19.

12. CANADA ARGUED THAT IT WAS UNWISE TO USE WORD "CRIMINAL" IN ARTICLE 19 OF SR AT LEAST UNTIL HAVE A PROCEDURE FOR ESTABLISHING VIOLATIONS AND UNTIL CONSEQUENCES OF SUCH DENOMINATION KNOWN. CRITICIZED ILC FOR PREMATURELY TAKING UP ARTICLE 19.

13. ISRAEL STRESSED NATIONAL TREATMENT PROVISIONS OF MFN COULD NOT JUSTIFY TREATMENT OF PERSONS AT LEVEL LOWER THAN INTERNATIONAL MINIMUM. RE SR, QUESTIONED UTILITY OF ARTICLE 18(2). IN CRITICISM OF ARTICLE 19, STRESSED DANGERS OF POLITICAL MANIPULATION.

14. GONZALEZ GALVEZ (MEXICO) CRITICIZED TENDENCY TO HAVE IMPORTANT LEGAL ISSUES HANDLED OUTSIDE THE SIXTH COMMITTEE TO DETRIMENT OF THE ISSUES AND THE SIXTH COMMITTEE. HE DECRIED TENDENCY OF SOME TO REGARD SIXTH COMMITTEE AS LITTLE MORE THAN PLACE TO BURY DIFFICULT ITEMS. HE CALLED FOR REASSESSMENT AND REVITALIZATION OF SIXTH COMMITTEE. SAID IN 1977 THE COMITE SHOULD FOLLOW-UP ITS WORK ON DECLARATION OF FRIENDLY RELATIONS BY WORKING ON A TREATY ON THE NON-USE OF FORCE AND A TREATY ON PEACEFUL SOLUTIONS TO CONFLICTS GIVING EQUAL WEIGHT TO BOTH. RE ILC REPORT, SAID WORK ON MFN HAD BEEN IMPERVIOUS TO TRENDS IN INTERNATIONAL LAW AND THEREFORE REFUSED COMMENT. RE SR PRAISED ARTICLE 19 BUT SUGGESTED REPLACEMENT OF "AGGRESSION" IN ARTICLE 19(3) (A) WITH "NON-USE OF FORCE". NOTED PROBLEM OF SUBJECTIVE ELEMENT VIA WORD "SERIOUS" IN DEFINITIONS UNCLASSIFIED

UNCLASSIFIED

PAGE 04 USUN N 04756 270055Z

OF CRIMES.

15. SPAIN OPPOSED A CUSTOMS UNION EXCEPTION FROM MFN. RE SR, CALLED UPON ILC TO BRING ARTICLE 18(2) IN LINE WITH VIENNA CONVENTION ON TREATIES. MADE GENERAL NEGATIVE REMARKS ON ARTICLE 19, STRESSING LACK OF JUDICIAL DETERMINATION AND UNCERTAINTY OF CONSEQUENCES OF BREACH.

16. LESOTHO PRAISED ARTICLES OF MFN GIVING PREFERENTIAL TREATMENT TO LDC'S AND LANDLOCKED. CALLED FOR ADDITION OF AN ARTICLE EXCEPTING CUSTOMS UNIONS FROM MFN OPERATION.

17. NIGERIA STRESSED THE NEED FOR BENEFICIAL TREATMENT OF LDC'S WITHIN MFN. REMARKS ON SR WERE VERY BRIEF. RE ARTICLE 19, ONLY SAID THAT IT WAS "AN IMPORTANT

DEVELOPMENT".

18. ALL STATES CONTINUED TO COMMEND THE WORK OF
AMBASSADOR KEARNEY, REGRET HIS RETIREMENT.

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